



Appeal Decision

Site Visit made on 21 June 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2021

Appeal Ref: APP/B0230/W/21/3270072

10 Marsh Road, Luton LU3 2NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Arther against the decision of Luton Borough Council.
 - The application Ref 20/01517/FUL, dated 2 December 2020, was refused by notice dated 29 January 2021.
 - The development proposed is retention of canopies over outdoor seating areas.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. As indicated in the stated description of development, the proposed canopies (the canopies) are already in place at the site and are intended to be retained. I shall consider the appeal on this basis.

Main Issues

3. The main issues are:
 - The effect upon the character and appearance of the area; and
 - The effect upon the living conditions of adjoining residential occupiers, having particular regard to outlook; and
 - The effect upon the living conditions of adjoining residential occupiers, having particular regard to noise.

Reasons

Character and appearance

4. The site is located within a predominantly residential area and the appeal property is of traditional form and appearance. It exhibits various architectural features, which include exterior timber frames, bay windows and a conical roof element. These features offer visual interest and contribute to a charming exterior. Indeed, being set within spacious and verdant grounds, the property appears as a building of prominence and local status.
5. The canopies have a relatively discreet presence upon the site, being setback from the site's frontage at single storey height and having often open sides. Nevertheless, I observed the canopies to be visible, if only in part, from Cuffley Close where an apparent mishmash of modern and unsympathetic external-facing materials (including those used to construct associated boundary treatments) were visible. It is also the case that the canopies would be

appreciable to various close by residents. When also noting their excessive ground coverage, the canopies represent discordant and over-intensive additions to the site that appear at odds with the traditional appearance and spacious/green setting of the host property.

6. For the above reasons, the canopies cause harm to the character and appearance of the area. The proposal conflicts with Policies LLP1 and LLP25 of the Local Luton Plan 2011-2031 (adopted November 2017) (the Local Plan) in so far as these policies require all new development in the Borough to contribute to enhancing a sense of place and preserving or improving the character of the area and to not result in an over-intensification of the site.

Living conditions - outlook

7. As was evident upon inspection from Cuffley Close, the canopies and associated boundary treatments that have been erected in proximity to the site's north-eastern boundary are visible, in-part, from the private grounds of No 20 Cuffley Close (No 20). However, notwithstanding the modern appearance of the materials utilised, I am unpersuaded that the installations are of sufficient height and prominence to appear overbearing or visually intrusive in a living conditions context.
8. My on-site inspection similarly indicated that an adverse effect upon the standard of outlook experienceable by neighbouring residential occupiers to the southeast does not avail. This is not least due to the canopies being setback from the south-eastern boundary line.
9. For the above reasons, the canopies do not cause harm to the living conditions of adjoining residential occupiers, having particular regard to outlook. In the specific context of this main issue of the appeal, the proposal satisfactorily accords with Policies LLP1 and LLP25 of the Local Plan in so far as these policies seek to encourage healthy places.

Living conditions – noise

10. The appeal property has, I understand, historically operated as a hotel with an ancillary restaurant/bar facility at ground floor offering access to internal and external seating areas. As it would appear that no alternative use of the premises has been formalised, I shall consider this main issue of the appeal from this starting point.
11. As was apparent upon inspection, the canopies cover an expansive outdoor area that I observed to contain numerous different tables and associated seating opportunities. It is an area that evidently has the potential to be used intensively and by high numbers of patrons at any one time. Whilst peak periods of use could similarly apply to an area of uncovered outdoor space, such instances would be largely dependent upon favourable weather conditions and would be unlikely to consistently occur during a comparable range of hours and/or seasons of the year. To my mind, the canopies can reasonably be thought to promote noticeably increased hours/levels of patron activity and associated noise when compared to the site circumstances that would realistically have existed prior to their erection.
12. Given that the site sits immediately alongside neighbouring residential uses, it is appropriate to ensure that the potential for noise/disturbances is properly investigated and that potential mitigation measures are suitably explored and,

if necessary, implemented. Indeed, the Council's Environmental Protection Officer, in his role as a specialist internal consultee, has requested that a noise impact assessment be carried out to determine the impact upon occupiers of the nearest properties. This suggested approach appears logical and justified.

13. In the interests of controlling operations during sensitive time periods (late evening hours, for example), hours of use could potentially be conditioned in the event of a successful appeal. However, in the absence of a noise impact assessment (or similar), I cannot be sure what potential operating hours might be appropriate. Furthermore, the appellant has not indicated whether he would be accepting of potential restrictions being applied in this sense.
14. It has been suggested that the canopies serve to mitigate any noise and disturbance created. However, in the absence of a formal survey/assessment work, this assertion has not been robustly substantiated. Indeed, owing to their often-open sides and lightweight construction, the canopies would appear unlikely to offer substantive mitigation. This is even when acknowledging the various boundary treatments that I observed also to be in place.
15. For the above reasons, in the absence of supporting evidence to clearly demonstrate otherwise, the canopies, through promoting increased/intensive levels of patron activity, are likely to cause harm to the living conditions of adjoining residential occupiers having particular regard to noise. The proposal conflicts with Policies LLP1 and LLP25 of the Local Plan in so far as these policies seek to encourage quality and healthy places, and to minimise noise.

Other Matters

16. The Covid 19 pandemic continues to have a damaging effect upon the hospitality industry. Particularly in this context, the canopies assist in supporting the viability and successful operation of commercial activities at the site. When factoring in the fairly limited size of the on-site business involved, I attach moderate weight to these benefits.
17. Nevertheless, the canopies cause harm to the character and appearance of the area and, in the absence of clear evidence to the contrary, are likely to cause harm to the living conditions of adjoining residential occupiers having particular regard to noise. These harms, particularly when considered cumulatively, outweigh the scheme's benefits. The proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

18. For the above reasons, the appeal is dismissed.

Andrew Smith

INSPECTOR